

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000523-001 DT

12/05/2011

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT

J. Eaton

Deputy

STATE OF ARIZONA

CARON L CLOSE

v.

CORTNEY A GECK (001)

CORTNEY A GECK
3719 W CROCUS DR
PHOENIX AZ 85053

REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case No. TR2011008411

Scottsdale Municipal Court entered a default judgment against Defendant-Appellant Cortney A. Geck (Defendant) when he failed to appear for the hearing on an alleged violation of failure to provide proof of current insurance. Defendant contends the trial court erred in denying his motion to set aside the default judgment. For the reasons stated below, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On March 30, 2011, Defendant was stopped and charged with violating A.R.S. § 28-4135(C) (failure to provide proof of insurance). Defendant was also charged with a civil speeding violation, but it is not part of this appeal. The complaint, which Defendant signed, showed he was required to appear for a hearing on April 25, 2011. When Defendant failed to appear, the trial court entered a default judgment against him. On May 5, 2011, Defendant filed a Motion To See Judge, which the trial court deemed a Motion to Set Aside Default Judgment. The trial court immediately held a motion hearing wherein Defendant presented evidence of insurance coverage on the date of the violation. The trial court denied the motion. On May 5, 2011, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

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II. ISSUE: DID DEFENDANT PROPERLY PRESENT THE ISSUE FOR APPEAL.

Defendant has submitted a three-sentence appellate memorandum that neither clearly articulates any legal issue, references the record, nor cites any relevant authority. In terms of the remedy sought on appeal, Defendant is silent. Accordingly, Defendant's appellate memorandum fails to comply with Rule 8(a)(3), Super. Ct. R. App. P.—Civil, which states:

Memoranda shall include a short statement of the facts with reference to the record, a concise argument setting forth the legal issues presented with citation of authority, and a conclusion stating the precise remedy sought on appeal.

"In Arizona, opening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim." *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989). This Court "is not required to assume the duties of an advocate and search voluminous records and exhibits" to substantiate a party's claims. *Adams v. Valley National Bank*, 139 Ariz. 340, 343, 678 P.2d 525, 528 (Ct. App. 1984). When a litigant fails to include citations to the record in an appellate brief, the court may disregard that party's unsupported factual narrative and draw the facts from the opposing party's properly-documented brief and the record on appeal. *Arizona D.E.S. v. Redlon*, 215 Ariz. 13, 156 P.3d 430, ¶ 2 (Ct. App. 2007). Fundamental error aside, allegations without specific contentions or references to the record do not warrant consideration on appeal. *State v. Cookus*, 115 Ariz. 99, 104, 563 P.2d 898, 903 (1977). Fundamental error rarely exists in civil cases. See *Monica C. v. Arizona D.E.S.*, 211 Ariz. 89, 118 P.3d 37, ¶ 23 (Ct. App. 2005) (explaining that courts apply the doctrine sparingly and that fundamental error is error going to the case's very foundation that prevents a party from receiving a fair trial). See also *Bradshaw v. State Farm Mutual Automobile Ins. Co.*, 157 Ariz. 411, 420, 758 P.2d 1313, 1322 (1988) (doctrine of fundamental error in civil cases may be limited to situations when a party was deprived of a constitutional right). This Court finds no fundamental error in the record.

In the case *sub justice*, Defendant simply offers evidence of insurance coverage on the date of the violation. Most importantly, the trial court is required to dismiss the citation **only if** the defendant provides the trial court with proof of insurance **on or before** the date of the court appearance:

B. A person operating a motor vehicle on a highway in this state shall have evidence within the motor vehicle of current financial responsibility applicable to the motor vehicle.

C. Failure to produce evidence of financial responsibility on the request of a law enforcement officer investigating a motor vehicle accident or an alleged violation of a motor vehicle law of this state or a traffic ordinance of a city or town is a civil traffic violation that is punishable as prescribed in this section.

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D. A citation issued for violating subsection B or C of this section *shall be dismissed* if the person to whom the citation was issued produces evidence to the appropriate court officer *on or before* the date and time specified on the citation for court appearance and in a manner specified by the court [that either the person or the vehicle met the financial responsibility requirements at the date and time the citations was issued].

A.R.S. § 28–4135 (emphasis added). Because the offense is failure to have proof of insurance within the vehicle at the time of the stop, the fact that the defendant may have had insurance in effect at the time of the stop is otherwise irrelevant. In the present matter, Defendant failed to provide the trial court with proof of insurance on or before the specified hearing. Nothing in the record suggests the trial court abused its discretion when it denied Defendant’s motion to set aside default judgment.

III. CONCLUSION.

Based on the foregoing, this Court concludes Defendant failed to properly present his issues for appeal.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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